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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/766,815 01/22/01 WURZ

A ASI-PT009.3

003624

MM91/1025

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EXAMINER

RHOM, H

ART UNIT

PAPER NUMBER

2877

DATE MAILED:

10/25/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/766,815	WURZ ET AL.
Examiner	Art Unit	
Hoa Q. Pham	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 July 2001.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 2-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,7.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

Application/Control Number: 09/766,815  
Art Unit: 2877

## DETAILED ACTION

### Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
2. The status of the "continuation data" should be update.

### Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kakinoki et al (5,004,929) in view of Schmutz (5,555,090).

Regarding claims 2-3, 16-17, and 18-19; Kakinoki does not explicitly teach that the object to be inspected is moved by a conveyor and the optical inspection system is located on a chassis. However, such a feature is known in the art, for example, as taught by Schmutz. Schmutz, from the same field of endeavor, discloses a system for measuring the dimensions of an object in which the object is moved on a conveyor and the inspection system is located on a chassis (see figure 1). Those of ordinary skill in the art at the time the invention was made to use the basic device of Kakinoki et al for detecting the packages which is transferred on a conveyor as taught by Schmutz because the device would function in the same manner.

HP  
10/19/01

Application/Control Number: 09/766,815  
Art Unit: 2877

Regarding claims 4, 8-9 and 20, Kakinoki et al does not explicitly teach that the sensor is a line scan camera or CCD; however, such a feature is known in the art as taught by Schmutz. Schmutz teaches that the linear camera (160) is used for detecting the height of an object (column 4 lines 61-62). Those of ordinary skill in the art at the time the invention was made to replace the position sensitive detector of Kakinoki et al by a camera as taught by Schmutz because they both can be used for detecting the height of an object. A substitution for each other is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 5-7, Kakinoki et al does not teach that the width or the length of the object is measured. However, it would have been obvious to one having ordinary skill in the art to use the basic device of Kakinoki et al for measuring the length or width of the object if additional measurement is desired.

Regarding claims 10-13, see column 6 lines 3-13 of Kakinoki et al for Position Sensitive Detector (PSD).

Regarding claims 14-15, see column 2 lines 57-58 of Kakinoki et al for parabolic reflector.

5. Claims 2-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordbryhn (4,996,440) in view of Schmutz.

Regarding claims 2-3, 16-17, and 18-19; Nordbryhn does not explicitly teach that the dimensions of object to be measured is height. However, such a feature is known in the art, for example, as taught by Schmutz. Schmutz, from the same field of endeavor,

discloses a system for measuring the height of an object (see abstract). Those of ordinary skill in the art at the time the invention was made to use the basic device of Nordbryhn for detecting the height of the object as taught by Schmutz because the device would function in the same manner.

Regarding claims 4, 8-13 and 20, Nordbryhn does not explicitly teach that the sensor is a line scan camera or CCD; however, such a feature is known in the art as taught by Schmutz. Schmutz teaches that the linear camera (160) is used for detecting the height of an object (column 4 lines 61-62). Those of ordinary skill in the art at the time the invention was made to replace the detector (9) of Nordbryhn by a camera as taught by Schmutz because they both can be used for detecting the height of an object. A substitution for each other is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 5-7, both Nordbryhn and Schmutz do not teach that the width or the length of the object is measured. However, it would have been obvious to one having ordinary skill in the art to use the basic device of Nordbryhn or Schmutz for measuring the length or width of the object if additional measurement is desired.

Regarding claims 14-15, see figure 2 of Nordbryhn for parabolic reflector (7).

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 2-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 5,661,561 or claims 1-24 of U.S. Patent No. 6,177,999. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of the present claims are recited in the patents' claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are relative to dimensions measurement: Okada et al (5,125,741), Richter (5,457,537), Pirlet (4,171,917), Sick (3,744,915), Dlugos (5,777,746), and Kaser (5,283,022).

#### ***Information Disclosure Statement***

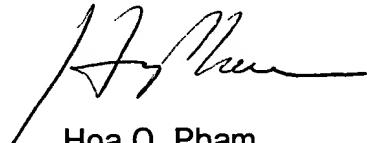
9. The information disclosure statement filed 7/12/01 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

**With respect to the present invention, a copy of the foreign patents are not found.**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (703) 308-4808. The examiner can normally be reached on 6:30 AM to 5 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703) 308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Hoa Q. Pham  
Primary Examiner  
Art Unit 2877

Pham/hp  
October 19, 2001